

**Testimony of Margaret Seminario,  
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Before the House Subcommittee on Environment and Hazardous Materials of the  
Committee on Energy and Commerce  
Legislative Hearing on S. 742, The Ban Asbestos in America Act of 2007 and  
Draft Legislation to Ban Asbestos In Products  
February 28, 2008**

Chairman Wynn, Ranking Member Shimkus and members of the committee, I appreciate the opportunity to testify today on behalf of the AFL-CIO on legislation to ban asbestos. During my more than 30 years with the AFL-CIO, I have worked on asbestos regulations and legislation, including OSHA asbestos regulations, EPA's asbestos ban and regulations and legislative efforts to compensate asbestos victims for their diseases. I also participated in the development of the ILO Convention on Asbestos adopted in 1986, and led the successful efforts at the 2006 ILO Conference to adopt a resolution calling for the elimination of the future use of asbestos worldwide.

The AFL-CIO strongly supports federal legislation to ban asbestos. We applaud the efforts of Senator Patty Murray to champion and guide the passage of asbestos ban legislation in the Senate and the efforts of this committee to initiate similar legislative efforts in the House of Representatives.

Without question, exposure to asbestos has resulted in the greatest occupational health epidemic in the nation's history. Hundreds of thousands of workers have died from asbestosis, lung cancer, mesothelioma and other cancers, and hundreds of thousands more have been disabled. While exposures to asbestos and its use have been reduced, this legacy of disease continues. Mesothelioma cases are still increasing, with 2,657 mesothelioma deaths reported in 2004 and an estimated 10,000 workers dying each year of all asbestos-related diseases (NCHS, 2007 and EWG, 2004).

For decades, the AFL-CIO and our affiliated unions have fought to protect workers from the hazards of asbestos. Immediately following the passage of the Occupational Safety and Health Act, in 1971, the AFL-CIO's Industrial Union Department petitioned OSHA to take emergency action to regulate asbestos. In response to that petition, the Department of Labor issued an emergency standard on asbestos – the first standard under the new legislation – in December 1971. But that standard, and the subsequent permanent rule, failed to adequately protect workers. So our efforts to reduce asbestos exposures continued, through the 1970's, 1980's and 1990's, repeatedly seeking stricter control measures through further petitions, legislation and court action. The unions' efforts led to the current OSHA asbestos standard that sets a permissible limit of 0.1 fibers/cc, issued in 1994.

But these standards have not been sufficient to protect workers. The early standards failed to address asbestos' cancer risk. And even the current standard, which was constrained by feasibility considerations and available sampling and analytical methods, leaves workers at significant risk. According to OSHA, exposure to levels of asbestos permitted by the standard will result in 3.4 excess cases of cancer and 2.5 cases of asbestosis for every 1,000 individuals exposed over a working lifetime (OSHA 1994).

Unfortunately, many workers continue to be exposed to asbestos. While the new use of asbestos has dramatically declined in the United States, largely as a result of product liability litigation, millions of tons of asbestos remain in place, exposing construction, demolition, maintenance workers and others to this serious hazard. Too many employers ignore or fail to follow required asbestos control measures continuing to put workers in danger. For 2007, OSHA reported 761 violations of its asbestos standards, the majority of them in the construction industry (OSHA 2008).

In the mining industry, which is covered by the Mine Safety and Health Act, the permissible exposure limit for asbestos is still 2 fibers/cc, putting workers in that industry at very great risk. A new revised MSHA asbestos standard lowering the level to 0.1 f/cc is expected to be finally issued – 14 years after OSHA adopted this exposure limit and decades of foot dragging by MSHA.

And it is not only workers who are at risk. Mesothelioma and other asbestos diseases have been well documented among family members who were exposed through take-home exposures by workers. In some cases these exposures were of limited short duration. Similarly, members of the public have been exposed through community and environmental exposures, as was the case in Libby, Montana where thousands of residents were unknowingly exposed to asbestos contaminated vermiculite, causing widespread disease. Other mined and quarried products contaminated with asbestos, including talc, taconite, and road aggregate also present exposure risks to both workers and the public. Excess disease has been documented among individuals exposed to contaminated talc and taconite and among individuals who live in close proximity to areas contaminated with naturally occurring asbestos. There is growing concern about the health risks of low-level exposures to asbestos among the public and workers.

The AFL-CIO's experience with the devastating epidemic of disease caused by exposure to asbestos and the difficulty of controlling exposures over the long lifespan of this product led us to the conclusion many years ago that asbestos should be banned. We strongly supported EPA's efforts in the 1980's to ban the use of asbestos in a wide range of products and were greatly disappointed when the government abandoned those efforts after the 1989 asbestos ban regulation was struck down in court. Even though the use of asbestos has greatly declined since that time, asbestos is still being used in a number of products. In addition, the

contamination of imported toys and other products with asbestos is a growing concern, with the government lacking authority to take the necessary action to keep these products out of the stream of commerce.

Federal legislation is necessary to put an end to the future use of asbestos. Such action will not only protect American workers and members of the public. It will also set an example that will greatly assist in efforts to ban asbestos in other countries where asbestos use and exposures pose a mounting health risk that left unabated will continue the asbestos disease epidemic worldwide.

### **Comments on S. 742 and the Committee Draft Legislation to Ban Asbestos**

It is the AFL-CIO's view that the goal of asbestos ban legislation should be to stop the introduction of asbestos into the stream of commerce as quickly as possible. Given the potential for serious health effects at low levels of exposure, and great difficulty in controlling exposures over the lifecycle of this product, the goal of the legislation should be to apply the ban on the use of asbestos as broadly as possible.

### **Definition of Asbestos and Thresholds**

To this end, the AFL-CIO has great concern with the 1% threshold for the application of the asbestos ban contained in the S. 742 as passed by the Senate. In our view, this threshold level will allow levels of asbestos contamination that have the real potential to pose a significant health risk to workers and the public.

The 1% threshold was included in the Senate bill by applying the asbestos ban to "asbestos-containing materials" as defined in the Asbestos Hazard Emergency Response Act (AHERA). However, EPA has been clear that the 1% concentration of asbestos cannot and should not be considered a safe limit. In a 2004 memo, EPA's Michael B. Cook, Director of the Office of Superfund Remediation and Technology Innovation directed the regional

Superfund National Policy Managers not to assume that materials containing less than 1 % asbestos did not pose an unreasonable health risk (EPA, 2004). The memo points out that the 1% threshold used in asbestos regulations under the Clean Air Act and AHERA statute were based upon limits in the asbestos sampling method, and is not a health-based limit. On the contrary, the memo cites data from the Libby, Montana superfund site that showed soil and debris containing less than 1% asbestos released unacceptably high levels of airborne asbestos. A subsequent 2005 memo by the Senior Medical Officer at the Libby Asbestos Site, Dr. Aubrey Miller, reiterated this warning, also pointing to other published research demonstrating significant levels of airborne asbestos generated by soils containing asbestos in concentrations of less than 1% (Miller, 2005).

MSHA has also recognized the hazards posed by asbestos present in materials in lower concentrations. In the preamble to its proposed asbestos standard in 2005, MSHA reported that sampling at a wollonstoneite mine where the asbestos averaged 1.3% of the total fibers, found that over half the worker exposures in the mill exceeding 0.1 f/cc, with some concentrations in excess of the current 2.0 f/cc MSHA standard (MSHA, 2005). As noted, OSHA has determined that exposure to such level pose a significant risk of developing cancer. Both the OSHA asbestos standard and proposed MSHA asbestos standard require health warning labels for asbestos products that contain in excess of 0.1% asbestos by weight.

It is the AFL-CIO's view that the 1% asbestos threshold in S. 742 will put workers and the public at increased risk of disease, and should be eliminated. The proposed definition of asbestos in the House Committee Draft, which is similar to the definition of asbestos that was contained in S. 742 as introduced is much more protective, and we would urge the committee to adopt a definition of asbestos which does not include a threshold. To the extent that there are products for which a zero threshold is not feasible, these products can be addressed on a

case-by-case basis through an exemption process, as provided for in both the Senate and House bills.

## **Exemptions**

Both S. 742 and the House draft provide for exemptions from the asbestos ban. Ideally, the AFL-CIO would like to see a ban on the use of all asbestos and asbestos products. But to the extent there are exemptions, they should be narrowly crafted, be granted only if the continued use does not pose a risk to health and be in place only as long as needed for substitute products or processes to be developed. In addition, such exemptions should only be granted after a public rulemaking process, as is provided for in the House draft for non-governmental exemptions.

The AFL-CIO is concerned about the statutory exemption granted the chlorine industry for the use of asbestos in the diaphragm-cell process. Significant amounts of asbestos are used in this process and there is potential for worker exposure. Both S. 742 and the House Committee print require that EPA re-evaluate the exemption for existing diaphragm cell processes three years after enactment and every six years thereafter to determine if continued use poses a risk. But unlike for the general exemption provisions, there is no requirement that the Administrator determine if there are available substitutes that can be used. According to testimony provided by Dr. Barry Castleman during the Senate hearings, there are alternative technologies that can be used in the chlor-alkali process that do not require asbestos (Castleman, 2007). These technologies are being widely utilized in Europe. Rather than provide an open-ended exemption to the chlor-alkali industry, the legislation should set a time frame for phasing out the use of diaphragm cell processes that rely on asbestos.

The House draft also includes an exemption for the use of aggregate products extracted from stone, sand or gravel operations if they contain less than 0.25% asbestos or lower limit if

specified by the EPA Administrator, if they are used in cemented products. The provisions in the House draft are similar to those adopted by the State of California in regulations to address the use of contaminated aggregate in road construction. The 0.25% content was based upon the limits of detection in the sampling method (CARB 435) relied on in the California regulation.

The AFL-CIO believes that the goal of the legislation should be to eliminate asbestos and asbestos contaminated products from the stream of commerce. To this end, the bill should direct EPA to lower the asbestos threshold for aggregate products to the limits of detection of the analytical method recommended by EPA, and not require a separate finding that the asbestos threshold level is not protective of human health.

### **Implementation and Timelines**

The Senate bill would implement the asbestos ban by rule; the House draft proposes that it be done directly by statute. Given the lengthy and resource intensive nature of the rulemaking process, implementing the ban statutorily is much more preferable.

Both versions of the bill provide a two-year timeframe for implementation of the asbestos ban. This two-year timeframe makes sense if the ban is implemented by rule, but if implemented by statute, a shorter time frame should be considered. We would recommend that the ban take effect six months after the enactment of the statute, and certainly no later than one year after the law is passed.

### **Scientific Studies, Research and Treatment**

The Senate bill mandates a number of important studies on the health effects of asbestos and other elongated mineral particles. These studies are not included in the current House draft bill, since these issues are under the jurisdiction of the Health Subcommittee. There is great concern about the health effects of non-asbestiform minerals and other minerals

that have physical characteristics similar to asbestos, particularly since some of these products may be used as substitutes for asbestos and are essentially unregulated. We urge the Energy and Commerce Committee to include the NIOSH and National Academy of Sciences reviews of the health effects of non-asbestiform minerals and elongated particles in the bill reported by the full Committee. In addition, we urge the Committee to include the research provisions on asbestos-related diseases and the establishment of an asbestos-related disease research and treatment network that are included in section 4 of S. 742.

## **Conclusion**

Asbestos has been responsible for the deaths of hundreds of thousands of Americans, and the terrible legacy of deaths and disease continues. It's time to finally ban this toxic product and stop its future use.

We urge the committee to adopt legislation that is broad and comprehensive and eliminates the 1% threshold included in the Senate bill, and to move expeditiously so asbestos ban legislation can be enacted into law before this session of Congress concludes.



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